UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

LIONEL MONSANTO, *Plaintiff,*	:	
VS.	:	**C.A. No.: 1:16-cv-00147**
STATE OF RHODE ISLAND, ***by and through its*** **SECRETARY OF TREASURY, SETH MAGAZINER; JAMES DONNELLY TAYLOR** ***individually and in his official capacity*****; GREGORY PALMER** ***individually and in his official capacity*****; RHODE ISLAND STATE POLICE; COLONEL STEVEN G. O'DONNELL** ***individually and in his official capacity,*** ***State Defendants.***	:	

ANSWER OF STATE OF RHODE ISLAND, JAMES DONNELLY TAYLOR, IN HIS OFFICIAL CAPACITY, GREGORY PALMER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, RHODE ISLAND STATE POLICE, COLONEL STEVEN G. O'DONNELL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY, TO PLAINTIFF'S THIRD AMENDED COMPLAINT

Now comes the State Defendants, James Donnelly Taylor, in his official capacity only, Gregory Palmer, in his individual and official capacity, Colonel Steven O'Donnell, in his individual and official capacity, the State of Rhode Island and the Rhode Island State Police (hereinafter "State Defendants") and hereby Answer Plaintiff's Third Amended Complaint as follows:

INTRODUCTORY STATEMENT

1. Paragraph 1 is a statement of jurisdiction and no responsive pleading is required thereto; if deemed required, State Defendants deny said allegations and leave Plaintiff to his proof thereof.

JURISDICTION

2. Paragraph 2 is a statement of jurisdiction and no responsive pleading is required thereto; if deemed required, State Defendants deny said allegations and leave Plaintiff to his proof thereof.

3. Paragraph 3 is a statement of jurisdiction and no responsive pleading is required thereto; if deemed required, State Defendants deny said allegations and leave Plaintiff to his proof thereof.

VENUE

4. Paragraph 4 is a statement of jurisdiction and no responsive pleading is required thereto; if deemed required, State Defendants deny said allegations and leave Plaintiff to his proof thereof.

PARTIES

5. State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph 5 of Plaintiff's Amended Complaint and therefore denies these allegations.

6-11. Admit.

FACTUAL ALLEGATIONS

12. Admit.

13-15. State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraphs 13-15 of Plaintiff's Amended Complaint and therefore denies these allegations.

16-17. Admit.

18. Admit.

19. Admit that the police "approach[ed] Plaintiff's vehicle and ask[ed] [Plaintiff] for his license and registration" and "Plaintiff asked why he was being pulled over" but deny the remaining allegations of Paragraph 19.

20. Admit that "Defendant Donnelly-Taylor took Plaintiff's information, went back to their vehicle" and "came back and advised Plaintiff that he was being pulled over because he was speeding" but deny the remaining allegations of Paragraph 20.

21. Deny.

22. State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph 22 of Plaintiff's Amended Complaint and therefore denies these allegations.

23. Deny.

24. Admit that Plaintiff was arrested for “driving with an expired license.”

25. Admit.

26. State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph 26 of Plaintiff’s Amended Complaint and therefore denies these allegations.

27. Deny.

28. Deny.

29. Admit.

30. Deny.

31. Admit that Defendant Donnelly-Taylor struck Plaintiff.

32. Deny.

33. Deny.

34. Admit that Plaintiff advised Defendant Donnelly-Taylor that a camera was present.

35. Deny.

36. Admit.

37. State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph 37 of Plaintiff’s Amended Complaint and therefore denies these allegations.

38. State Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in paragraph 38 of Plaintiff’s Amended Complaint and therefore denies these allegations.

COUNT 1
CIVIL RIGHTS VIOLATIONS UNDER 42 U.S.C § 1983

39. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 38, as if fully set forth herein.

40-42. Deny.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT II
STATE OF RHODE ISLAND'S FAILURE TO TRAIN AND SUPERVISE

43. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 42, as if fully set forth herein.

44-47. Deny.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT III
CONSPIRACY TO VIOLATE PLAINTIFF'S CIVIL RIGHTS UNDER SECTION 1983

48. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 47, as if fully set forth herein.

49. Deny paragraph 49 and all of its subparts.

50. Deny.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT IV
COLONEL STEVEN G. O'DONNELL'S SUPERVISORY LIABILITY UNDER 42 U.S.C. § 1983

51. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 50, as if fully set forth herein.

52-55. Deny.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT V
ASSAULT AND BATTERY

56. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 55, as if fully set forth herein.

57-59. The allegations contained in paragraphs 57-59 do not apply to the State Defendants and no response is necessary. To the extent that paragraphs 57-59 require a response from the State Defendants, they are denied.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT VI
MALICIOUS PROSECUTION

60. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 59, as if fully set forth herein.

61-67. Deny.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT VII
FALSE IMPRISONMENT AND FALSE ARREST

68. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 67, as if fully set forth herein.

69-75. Deny.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT VIII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

76. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 75, as if fully set forth herein.

77-79. Deny.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

COUNT IX
VIOLATION OF RHODE ISLAND GENERAL LAWS § 9-1-35

80. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 79, as if fully set forth herein.

81-83. Deny.

COUNT X
VIOLATION OF RHODE ISLAND GENERAL LAWS § 31-21.2-3

84. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 83, as if fully set forth herein.

85-87. Deny.

COUNT XI
CIVIL RIGHTS VIOLATIONS UNDER 42 U.S.C. § 1983

88. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 87, as if fully set forth herein.

89-91. Deny.

COUNT XII
RESPONDEAT SUPERIOR

92. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 91, as if fully set forth herein.

93-94. The allegations contained in paragraphs 93 and 94 contain legal conclusions to which no response is required.

95. Admit.

96. Deny.

COUNT XIII
RESPONDEAT SUPERIOR

97. State Defendants hereby incorporate by reference their responses to paragraphs 1 through 96, as if fully set forth herein.

98-99. The allegations contained in paragraphs 98 and 99 contain legal conclusions to which no response is required.

100. Admit.

101. Deny.

STATE DEFENDANTS DEMAND A JURY TRIAL

[*This Portion Intentionally Left Blank*]

STATE OF RHODE ISLAND, THE RHODE ISLAND STATE POLICE, JAMES DONNELLY TAYLOR, IN HIS OFFICIAL CAPACITY, GREGORY PALMER, IN HIS OFFICIAL AND INDIVIDUAL CAPACITY, COLONEL STEVEN G. O'DONNELL, IN HIS OFFICIAL AND INDIVIDUAL CAPACITY.

By Their Attorney,

PETER F. KILMARTIN
ATTORNEY GENERAL

/s/Rebecca Tedford Partington
/s/ Chrisanne Wyrzykowski

____

Rebecca Tedford Partington #3890
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AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's Complaint fails to state a claim upon which relief can be granted. Plaintiff's Complaint fails to allege facts sufficient to show that Plaintiff is entitled to recover any damages as against State Defendants.

Second Affirmative Defense

State Defendants have the benefit of the State's status as sovereign, together with all privileges and immunities that inure to said sovereign status.

Third Affirmative Defense

State Defendants have the benefit of all expressed and implied exceptions to the waiver of sovereign immunity.

Fourth Affirmative Defense

State Defendants claim the benefit of Eleventh Amendment immunity to the extent applicable to this civil action.

Fifth Affirmative Defense

State Defendants plead the public duty doctrine.

Sixth Affirmative Defense

State Defendants have the benefit of discretionary immunity.

Seventh Affirmative Defense

To the extent State Defendants are not immune and are held liable for damages, which liability is expressly denied, the monetary limitations on damages set forth in State law should apply.

Eighth Affirmative Defense

At all times material to the matters alleged in the Complaint, the State Defendants were in the exercise of due care and had in good faith duly fulfilled any and all duties owed to Plaintiff if, in fact, any duties were owed.

Ninth Affirmative Defense

That the actions of the State Defendants were reasonable, proper and legal.

Tenth Affirmative Defense

State Defendants had legal justification for all of their actions relative to Plaintiff.

Eleventh Affirmative Defense

The actions of the State Defendants were lawful and proper and probable cause existed for the arrest of Plaintiff.

Twelfth Affirmative Defense

State Defendants plead the defense of no duty owed to the Plaintiff, and in the alternative, that the State Defendants met any duty imposed under the law.

Thirteenth Affirmative Defense

State Defendants at all times acted reasonably, within the scope of their employment, in an authorized manner, and each in their official capacity.

Fourteenth Affirmative Defense

State Defendants are not "persons" for the purposed of 42 U.S.C. § 1983.

Fifteenth Affirmative Defense

State Defendants acted reasonably and in good faith and did not violate any clearly established law and, therefore, plead qualified immunity.

Sixteenth Affirmative Defense

State Defendants at all times acted reasonably, within the scope of their employment, in an authorized manner, and each in their official capacity.

Seventeenth Affirmative Defense

The acts or omissions of State Defendants were not a conscious disregard of Plaintiff's needs or rights; were not intentional and willful; and were not in violation of Federal or State law.

Eighteenth Affirmative Defense

The acts or omissions of State Defendants do not constitute actual fraud, willful misconduct, or actual malice in violation of Federal or State law.

Nineteenth Affirmative Defense

Plaintiff is not entitled to monetary damages as against State Defendants under Federal or State law.

Twentieth Affirmative Defense

Plaintiff is not entitled to punitive damages as against State Defendants under Federal or State law.

Twenty-first Affirmative Defense

Plaintiff is not entitled to attorney's fees, interest, or costs under Federal or State law.

WHEREFORE, State Defendants pray that the Complaint in this civil action be dismissed; that they be awarded reasonable attorney's fees and costs incurred in the defense hereof; and such other relief as is lawful and proper.

STATE OF RHODE ISLAND
By Its Attorney,

PETER F. KILMARTIN
ATTORNEY GENERAL

/s/Rebecca Tedford Partington
/s/ Chrisanne Wyrzykowski

____

Rebecca Tedford Partington #3890
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CERTIFICATION

I, the undersigned, hereby certify that I filed the within Answer to Complaint via the ECF filing system and that a copy is available for viewing and downloading. I have also caused a copy to be sent via the ECF System to the following attorney of record on this 13th day of February, 2017.

Robert J. Caron
rcaron@robertjcaronlaw.com

Michael J. Colucci
mjc@olenn-penza.com

/s/ Colleen Cole

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